

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

NOTICE FROM THE CLERK

NO. 02-34

Permanent Adoption of Local Rule 334 (Court-Annexed Mediation)  
Effective December 23, 2002

On November 13, 2002, the judges of this Court decided to publish, for purposes of public notice and opportunity for comment, Local Rule 334. See, In the Matter of Proposed Local Rule 334, Misc. No. 02-172(HL) (Docket No. 1). Local Rule 334 was adopted by the Court on an interim basis effective that same date pursuant to 28 U.S.C. §§ 2071(e), based on the Court's determination of its immediate need. The period for public comment concerning the proposed adoption of Local Rule 334 on a permanent basis was set to expire on December 16, 2002. Notice No. 02-26 was published by the Clerk on November 15, 2002, further indicating that, absent recall by the Court, same would be adopted on a permanent basis effective on December 23, 2002.

One written comment was submitted for filing under Miscellaneous Case No. 02-141(HL). See, In the Matter of Proposed Local Rule 334, Misc. No. 02-172(HL) (Docket No. 2). Same was referred to the Court for its consideration, after which it was determined that Local Rule 334 will be adopted on a permanent basis effective December 23, 2002, as published, See, In the Matter of Proposed Local Rule 334, Misc. No. 02-172(HL) (Docket No. 3), to wit:

**LOCAL RULE 334: COURT-ANNEXED MEDIATION**

- (1) Description. Mediation is a non-binding process whereby parties and counsel meet with a neutral mediator trained to assist them in settling disputes. Although mediators have no power to render a decision or dictate a settlement, mediation is generally recognized as improving communication between disputing parties by assisting them to articulate their interests. Mediators also assist in identifying areas of agreement in order to generate options for a mutually agreeable resolution.
- (2) Eligible cases. All civil cases arising under the jurisdiction of the United States District Court for the District of Puerto Rico are eligible for mediation. A case may be selected for mediation:

- (A) By the Court at its discretion;
- (B) By the Court on the motion of one of the parties; or
- (C) By the stipulation of all parties to a case.
- (D) A party may object for good cause to Court ordered mediation by filing a written request for reconsideration, within ten (10) days after the Court has issued a mediation order. Mediation processes will be stayed pending a decision on the request for reconsideration unless otherwise ordered by the Court.

(3) List of Mediators. The United States District Court for the District Court of Puerto Rico will establish a list of mediators. The list will be comprised of judicial officers, retired judges and attorneys who, based on their training or experience, are deemed to possess the qualities necessary to perform effectively as mediators. The Clerk of the Court will solicit and receive applications from individuals wishing to serve as mediators and the Chief Judge will designate a committee of judges to evaluate each candidate and determine which applicants may be included on the list.

(4) Selection of Mediators.

- (A) The Court will promptly notify the parties in writing when a case is referred to mediation. Once notice has been given, the parties will first be given an opportunity to select a mediator from the list maintained by the Court. The parties may select a mediator not on the Court approved list, provided the mediator signs a written agreement to be bound by these local rules. The parties must, within ten (10) days of the date of the Court's notice of referral to mediation, notify the Court of the name of the person selected by the parties to serve as mediator and file a written agreement with the selected mediator.
- (B) If the parties fail to agree to a mediator within the ten (10) day time period or fail to notify the Court within the ten (10) day time period, the Court will select a mediator from the approved list maintained by the Court.

- (C) If the Court selects the mediator, then it must identify all interested parties to the mediation and determine whether a mediator selected by the Court has any potential conflicts of interest.
- (5) **Compensation of Mediators.** A mediator will be compensated at a reasonable rate taking into consideration the qualifications of the mediator and the complexities of the issues in the case. The mediator's fee will be borne equally by the parties unless directed otherwise by the Court. The rate of compensation shall be agreed to in writing by the parties during the ten (10) day period parties are given to select a mediator as prescribed in subparagraph (4)(A). Should the parties fail to come to an agreement the Court shall set the level of fees.
- (6) **Mediation Order.** Once a mediator has been selected, the Court shall enter a mediation order. The order shall:
  - (A) Appoint a mediator;
  - (B) State the rate of compensation of the appointed mediator; and
  - (C) Establish a deadline for when mediation must be completed. The deadline shall not exceed six (6) months from the date of the order. Once mediation has commenced, the parties may request the Court for an extension of time beyond the deadline in order to complete the mediation process.
- (7) **Scheduling Mediation.** The mediator shall contact all attorneys to fix the date and place of the first mediation session. The first session must be held within thirty (30) days from the date the mediation order is entered. The mediation shall be held at the office of the mediator or at any other location mutually agreed to by the parties. At the completion of the first session, the mediator may schedule additional mediation sessions at a time and place agreed to by the parties.
- (8) **Written Submissions to the Mediator.** At least seven (7) days before the first mediation session, the parties must submit to the mediator:

- (A) Copies of all relevant pleadings and motions; and
  - (B) A mediation statement not to exceed ten (10) pages double-spaced (not including exhibits) outlining the key facts and legal issues in the case. The statement will also include each party's position regarding settlement. Mediation statements are not briefs and are not to be filed with the Court. Only the mediator shall have access to the statements.
- (9) **Mediation Session(s).** Once the mediation order has been entered, all parties and their respective counsel must attend all mediation sessions and engage in a good-faith effort to resolve the dispute as prescribed by subparagraph (10) of this Rule. If a party is a corporation, governmental institution or a minor, a representative of that party must be in attendance with binding authority to settle the matter.
- (A) **Separate Caucuses.** The mediator may hold separate, private caucuses with any party or counsel.
  - (B) **Expert Advice.** The mediator may obtain expert advice concerning technical aspects of a dispute, provided all parties agree and assume the expenses of obtaining such assistance.
  - (C) **Conclusion of Mediation.** Mediation shall conclude when:
    - (1) A settlement is reached. If the parties reach an agreement, the mediator will prepare a written summary reflecting the agreement. The parties shall sign the agreement and file it with the court;
    - (2) The mediator concludes and informs the Court that further efforts would not be useful; or
    - (3) One of the parties requests the Court that mediation be terminated. The Court shall grant such a request upon a showing by the requesting party that it has participated in the mediation in good faith and that further sessions are not likely to result in settlement.

- (10) **Participation in Mediation; Good Faith Requirement.** In all cases designated by the Court for mediation, good faith participation shall be mandatory for all parties. The failure of any party to participate in good faith shall result in sanctions. In determining good faith participation, the Court will rely heavily on the recommendation of the mediator.
- (11) **Confidentiality.** All mediation proceedings conducted pursuant to this Rule shall remain confidential. All written and oral communications made by the parties and the mediator in connection with or during any mediation session are confidential and may not be disclosed for any purpose unrelated to the mediation process. The mediator shall not be called by any party as a witness in any court proceeding related to the subject matter of the mediation unless related to alleged misconduct of the mediator or with respect to the good faith requirement contained in subparagraph (10) of this Rule. No papers generated or produced by the mediation process will be included in Court files, nor shall the Judge or Magistrate Judge assigned to the case have access to them. Information about what transpires during mediation sessions will not at any time be made known to the Court, except to the extent required to resolve issues of noncompliance with the mediation procedures. Nothing in this section shall be construed to prohibit parties from entering into a written agreement resolving some or all of the case or entering and filing with the Court any procedural or factual stipulations based on suggestions made or agreements reached as a result of the mediation process.
- (12) **Oath and Disqualification of the Mediator.**
- (A) Each individual certified as a mediator of the Court shall take the oath or affirmation prescribed by 28 U.S.C. § 453.
- (B) **Disqualification.** No mediator shall serve in any matter in violation of the standards set forth in Section 455 of Title 28 of The United States Code. If a mediator is concerned that a circumstance covered by subparagraph (a) of that section might exist the mediator shall promptly disclose that circumstance in


writing to all counsel to the dispute.

- (1) A party who believes that the mediator has a conflict of interest shall bring this concern to the attention of the Court in writing, and within ten days (10) of learning of the potential conflict or the objection shall be deemed waived.
- (2) A party who believes that the mediator has engaged in impermissible misconduct shall bring this concern to the attention of the Court in writing, and within ten (10) days of learning of the alleged misconduct or the objection shall be deemed waived.

BY ORDER OF THE COURT.

In San Juan, Puerto Rico, this 23<sup>rd</sup> day of December, 2002.

FRANCES RIOS DE MORAN, ESQ.  
CLERK OF COURT



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Chief Deputy Clerk

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